

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Lemoore, CA)

RAYTHEON AEROSPACE LLC

Employer

and

Case 32-RC-5157

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
DISTRICT LODGE 725, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer, a Delaware corporation and wholly owned subsidiary of Veritas Capital, LLC, a New York corporation, is engaged in C-12 aircraft maintenance and support at the Lemoore Naval Air Station in Lemoore, California. The Parties stipulate that the Employer is engaged in national defense and during the past twelve months performed services valued in excess of \$50,000 for the United States Navy. In these circumstances, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Parties stipulate and I find that the Petitioner is a labor organization with the meaning of the Act.

4. Petitioner claims to represent certain employees of the Employer.

5. A question affecting commerce exists concerning the representation of the certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. As amended at the hearing, Petitioner seeks to represent a unit of lead aircraft mechanic and aircraft mechanic employed by the Employer at the Lemoore, California Naval Air Station facility. The Employer contends that the lead aircraft mechanic is a statutory supervisor and should be excluded from the unit on that basis. Furthermore, as there has only been one aircraft mechanic assigned to this facility and there are no plans to increase that number, the Employer asserts that the petition should be dismissed because the unit would consist of one employee and could not be certified. For the following reasons, I find that the lead aircraft mechanic is not a statutory supervisor, but rather a leadman, and direct an election in the following bargaining unit:

All full-time and regular part-time lead aircraft mechanics and aircraft mechanics employed by the Employer at the Lemoore, California Naval Air Station facility; excluding office clerical employees, guards, and supervisors as defined in the Act.

THE FACTS

The Employer is under contract with the United States Navy and Air Force to maintain C12 aircraft at the Naval Air Station in Lemoore, CA. The C12 aircraft transports passengers and cargo. There is only one C-12 airplane at this facility although, on occasion, the mechanics are required to work on transient aircraft from other locations. The Employer employs two employees at the Lemoore facility to perform the C12 work, a lead aircraft mechanic and an aircraft mechanic. The lead mechanic, Timothy Machado, and the mechanic, Edward Dehart, are the only Raytheon employees in the C12 program at this facility.¹ Above them in the company hierarchy is Jim Clark, the Employer's Western Regional Manager, who is located in Whidbey Island, Washington. Clark has overall responsibility for 10 sites where the Employer maintains C12 aircraft. At three of those sites, mechanics are represented by labor organizations. At two of the sites, there are 4 mechanics and one lead mechanic; at the third site there are two mechanics and one lead mechanic. Lead mechanics are excluded from the unit at all three sites.

Here, the lead mechanic, Machado, has been working in the C12 program since 1981. Dehart, the mechanic, has been in the program since 1984. Both perform maintenance work on the aircraft; one generally works 6 am to 2 pm and the other from 10 am to 6 pm. At the end of 6 to 8 months, they switch schedules. However, flight schedules and operational needs ultimately dictate when they work, because mechanics must be present whenever there are flights. If the flight schedule requires

¹ There have been occasions since 1981 when a third mechanic worked on the C12 program, but there is no expectation of that occurring in the foreseeable future.

night work, Machado and Dehart take turns. At times, the flight schedule also requires that they work overtime. Again, Machado and Dehart agree between themselves how to cover the overtime. Because the overtime is required, prior approval is not necessary. There have been no disputes between Machado and Dehart about how to cover night or overtime work. As each employee typically works alone for about four hours per day, they both call one another at home to consult about technical aspects of the work. Machado testified that Dehart has had certain engine training that Machado has not had, and, therefore, Machado consults with Dehart about engine problems related to Dehart's special training.

In addition to performing mechanical maintenance work, as lead mechanic, Machado serves as the Employer's point of contact with the on-site government representative regarding flight and maintenance schedules. However, there is no evidence that Machado exercises any discretion or independent judgment while serving in this capacity. Machado is also responsible for administering a site operating fund which consists of \$400 cash. He uses this to pay small bills and for incidentals, but must receive approval from Clark to spend more than \$75 on any one item. In administering this fund, Machado must conform to the Employer's established policies and procedures, and he must prepare a monthly report regarding expenditures from the fund. Machado also prepares an aircraft status report, which tracks such things as flight time, total landings, aircraft hours, inspections and maintenance. In Machado's absence, Dehart has prepared and transmitted this report and has served as the contact person with the government representatives.

Machado testified that he has never been told by his superiors that he is a supervisor. Other than his job description, the evidence does not reflect that Machado was informed by his superiors as to the scope of his authority and the degree of discretions that he was permitted to exercise. Although Clark has not visited the site in the past year, Machado speaks to him by phone six to eight times per month. There is no evidence that they discuss personnel issues during these conversations. As lead mechanic, Machado earns approximately \$19.26 per hour, about \$1.75 more per hour than Dehart. As lead mechanic, Machado has never hired, fired, or disciplined anyone nor has he recommended any of those actions. He has never recommended anyone, for a pay raise, bonus or layoff, and Machado testified that he has no authority to grant or effectively recommend a wage increase, a bonus or other reward for Dehart. On one occasion in the mid-1980's, Machado informally interviewed an applicant for a mechanic position. However, the area supervisor then formally interviewed the applicant, and Machado was never asked for his input or recommendation. Machado did not participate in the interview process when Dehart was hired.

In his capacity as lead mechanic, Machado signs and transmits to the Employer Dehart's time sheets. Although Machado's signs the time sheets in order to verify that Dehart worked the hours claimed, I note that the significance of that verification is lessened by the fact that Machado is not even present during much of the time that Dehart is working. At one time, Machado was also directed to complete written evaluations for Dehart: this occurred in 1994, 1995, 1996 and 1999. Machado signed

the evaluations as the “evaluator” rather than as the “supervisor.” There is no evidence that any of these evaluations affected Dehart’s pay or status as a mechanic or resulted in any disciplinary action. Moreover, Machado has not been asked to complete any evaluations for Dehart since 1999, and since that time, Machado has not even been asked for an oral assessment of Dehart’s work.

According to Machado, he has extreme confidence in Dehart’s ability as a mechanic and Dehart does not require any supervision. Machado testified that if there were any performance problems, he would speak with regional manager Clark; however, Machado also stated that there has never been any need for him to do so. Although Clark testified that Machado has authority to issue verbal or written reprimands, Clark admittedly has not had any conversations with Machado about his having this disciplinary authority, and as noted above, Machado has never issued any warnings or even recommended that disciplinary action be taken.

Machado and Dehart are entitled to the same amount of vacation each year. Although Machado may theoretically have the authority to dictate the vacation schedule, in practice, Machado and Dehart reach agreement between themselves as to when it will be taken. There have been no occasions when they could not agree or when Machado has denied Dehart’s vacation requests. Moreover, Machado testified that if they could not agree on the schedule, he would speak to Clark about it. If for some reason Dehart requested more than his allotted four weeks of vacation, Machado testified that he would not be able to approve it and would refer the request to Clark. I also note that the potential for conflict with regard to vacation scheduling is extremely small. Machado and Dehart are the only two C12 workers at Lemoore, and when either of them is on vacation, Western Regional Manager Clark assigns a rover to the site, if necessary.² When either Machado or Dehart need time off for things such as medical appointments, they cover for each other. If one is sick, he calls the other to cover for him.

As a leadman, Machado also has some authority with regard to the assignment and direction of work. The evidence shows, however, that the condition of the plane and the Employer’s scheduled maintenance requirements typically dictate what work is to be done. Moreover, due to his extensive work experience, Dehart does not require direction from Machado, which is ably demonstrated by the fact that Dehart often works four or more hours a day without Machado being present to direct his work. With regard to who does what work, it appears that such decisions are made by mutual agreement, again reflecting the unique and long lasting work relationship of Machado and Dehart.

In sum, the record does not demonstrate that Machado exercises any independent judgment in his role as lead mechanic. Moreover, in out of the ordinary situations, such as when a C12 airplane from another service center lands at Lemoore and requires maintenance work, Machado has either consulted with Western Regional Manager Clark or has referred to the Employer’s Field Operations Policy Manual for direction on how to proceed.

² There is no evidence in the record as to what, if any, authority Machado exercises over the rover.

ANALYSIS AND CONCLUSIONS

Section 2(11) of the Act defines a supervisor as one who possesses “authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” The possession of any one of these primary indicia of supervisory authority, as specified in Section 2(11) of the Act, is sufficient to establish supervisory status, provided that such authority is exercised in the employer's interest, and requires independent judgment in a manner which is more than routine or clerical. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000); *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). However, the exercise of some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status on employees. *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985); *Advanced Mining Group*, 260 NLRB 486, 507 (1982). Moreover, because supervisory status removes individuals from some of the protections of the Act, only those personnel vested with “genuine management prerogatives” should be considered supervisors, and not “straw bosses, leadmen, set-up men and other minor supervisory employees.” *S.Rep.No. 105. 80th Cong. 1 Sec. 4* (1947); *Ten Broeck Commons*, 320 NLRB 806, 809 (1996).

The party asserting that individuals are supervisors under the Act bears the burden of proving their supervisory status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 121 S.Ct. 1861 (2001); *Bennett Industries, Inc.*, 313 NLRB 1363 (1994); *Tucson Gas and Electric Co.*, 241 NLRB 181 (1979). To meet this burden, the party asserting supervisory status must provide sufficient detailed evidence of the circumstances surrounding the alleged supervisor's decision making process in order to demonstrate that the alleged supervisor was exercising the degree of discretion or independent judgment that is necessary to establish supervisory status. In *Crittenton Hospital*, 328 NLRB 879 (1999), the Employer argued that charge nurses were supervisors because they had the power to make mandatory overtime assignments or call in substitutes, based on their assessment of whether staffing was adequate. However, there was “no evidence showing how mandatory overtime or additional staffing needs are determined, or the process by which employees are selected for overtime or call-in.”³ Thus, the Employer failed to demonstrate that RNs utilize independent judgment.” *Crittenton*, 328 at 879. Similarly, in *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000), charge nurses were not given any set order to follow in offering overtime to potential replacement employees. Nonetheless, the nurses' call-in

³ A further reason for requiring details about the alleged supervisor's decision making process is that independent judgment cannot be found where decisions are strictly regulated by specific employer policy. *Western Union Telegraph Co.*, 242 NLRB 825, 827 (1979). Thus, absent evidence regarding the nature and scope of the employer's policies, it would often not be possible to determine whether an alleged supervisor was actually exercising significant discretion.

authority was not found to be supervisory in the absence of evidence disclosing how they decided which employees to call. *Harborside*, 330 NLRB at 1336.⁴ Moreover, the nurses' reliance on volunteers and their lack of authority to compel overtime work underlined the absence of supervisory power. See *Harborside*, 330 NLRB at 1336.

Because the Employer is asserting that Machado is a supervisor, it has the burden of establishing his supervisory status. For the reasons set forth below, I find that the Employer has failed to meet this burden, and I will, therefore, include Machado in the unit. Machado has never been told that he is a supervisor or that he has supervisory authority over Dehart. The record also fails to establish that Machado possesses or exercises statutory supervisory authority. In this regard, there is no evidence that he has the authority to hire, discipline, transfer, lay off, recall, appraise, promote, adjust grievances, or grant time off, or to effectively recommend any of these actions.

With regard to his authority to direct and assign work, it appears that many of these decisions are dictated by the Navy's decisions regarding when it will be flying the C12 and by the Employer's policy manuals. To the extent that such direction of work and scheduling issues are not governed by the Navy or the policy manual, the record shows that these issues, including work assignments, work schedules, overtime and vacations, are routinely arranged through mutual agreement, rather than through Machado exercising authority based on an exercise of significant discretion. On those occasions when Machado has been unsure how to proceed or what his priorities should be, he has consulted with regional manager Clark or referred to the policy manual. Likewise, Machado's handling of the site operating fund pursuant to the Employer's set policies and procedures does not confer supervisory status, particularly when he must seek approval for any expenditures over \$75. The fact that Machado is responsible for the C12 workflow at the facility, and has some theoretical but unexercised authority regarding the direction of work, is insufficient to establish that he is a Section 2(11) supervisor. *Laser Tool, Inc.*, 320 NLRB 105, 107 (1995) and *Byers Engineering Corp.*, 324 NLRB 740, 741-42 (1997).

In its post-hearing brief, the Employer correctly argues that there would be no on-site supervisor if Machado were found to be a unit employee. While this factor is worthy of consideration, it is not the controlling factor in determining whether an individual is a supervisor. While it might be unusual for there to be no supervisor, this is an unusual situation in that both employees are highly experienced in performing work on the C12 and have worked side by side for over 18 years. Thus, Dehart is an experienced mechanic, who knows how to perform his work on the C12, and needs no direction in doing so. Machado, as his job title reflects, acts as a lead person with regard to the mechanical work, transmits certain reports to his superiors, and has responsibility for interacting with the government representatives. As such, he operates as a conduit for relaying information to his superiors who are not present at the site on a daily basis.

⁴ See also *Sears, Roebuck & Co.*, 304 NLRB 193 (1991); *Quadrex Environmental Co.*, 308 NLRB 101 (1992), which also reject the use of mere inference or conclusionary statements without supporting evidence to establish supervisory status.

Because of these additional responsibilities and his longer tenure of employment, it is appropriate that he would be paid a somewhat higher hourly wage than Dehart.

Accordingly, I find that Machado is not a supervisor within the meaning of the Act and he will be included in the unit.⁵

There are 2 employees in the above-described unit.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, DISTRICT LODGE 725, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. **Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote.** Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

⁵ Neither party has challenged the appropriateness of the petitioned-for unit on grounds other than the supervisory status issue concerning Machado. I note that the evidence establishes that Machado and Dehart have similar skills, perform the same type of work, and work together for a significant portion of their workday. Both of them are hourly paid, receive the same benefits and are subject to the same personnel rules. They are both supervised by Western Regional Manager Clark. Thus, the evidence establishes that Machado and Dehart share a strong community of interest, and I find that that the petitioned-for unit is an appropriate unit. *Overnite Transportation Company*, 322 NLRB 723 (1996); and *Overnite Transportation Company*, 331 NLRB 662 (2000).

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employers with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before June 30, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **July 7, 2003**. The request may **not** be filed by facsimile.

DATED AT Oakland, California this 23rd day of June 2003.

Michael Leong
Acting Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

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